

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.3.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P. No.5101 of 2015

Kalaimagal Kalvi Nilayam Girl's Matriculation School
represented by its Secretary and Correspondent
Kalaimagal Kalvi Nilayam Road,
Erode - 638 001

... Petitioner

Vs.

1. The Director of Matriculation Schools
College Road, Chennai -600 006
2. The Inspector of Matriculation Schools
Erode 638 002

... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the first respondent herein to forthwith consider the representations of the petitioner ending with the last representation dated 29.12.2014 seeking conditional recognition subject to the result of the order in SLP (Cvil) No.11497 of 2010 pending before the Honorable Supreme Court of India.

For Petitioner : Mr.K.Doraisami
Senior Counsel for
M/s.Muthumani Doraisami

For Respondent : Mr.S.Gunasekaran
Government Advocate

O R D E R

Heard Mr.K.Doraisamy, learned Senior counsel for the petitioner and Mr.S.Gunasekaran, learned Government Advocate appearing for the respondents.

2. The petitioner school seeks for issuance of a writ of mandamus to direct the first respondent to forthwith consider their representation last of which being sent on 29.12.2014 seeking conditional recognition subject to the result of Special Leave Petition (Civil) No.11497 of 2010 filed by the respondents

challenging the order passed by the Honorable Division Bench of this Court in W.A.No.23 of 2010, which is pending without interim orders.

3. The petitioner is an educational institution which has been established and functioning for several decades and running a Higher Secondary School along with primary section. The Petitioner Institution has got sufficient number of pupils, play ground facilities etc. The school is fully aided and has been granted recognition for all these years. In the year 2008, the Director of School Education passed an order dated 09.2.2008 rejecting the request for No Objection Certificate. This was challenged by the petitioner by filing WP.No.21440 of 2009 wherein apart from seeking to quash the said proceedings, a direction was sought to grant permanent recognition to the petitioner Institution. The matter was elaborately argued and this Court allowed the writ petition by order dated 27.11.2009 and directed the second respondent to grant recognition to the petitioner's school within the time frame. The operative portion of the order reads as follows:-

25. In the present case, the Director of School Education, the fourth respondent by his letter dated 23.5.2007 requested the fifth respondent to inspect the property and sent a report. Thereafter, a report was sent to the Director of School Education. Subsequently, by proceedings dated O.Mu.No.40535/W-IV/E2/08, dated 5.1.2009, the fourth respondent had addressed to the second respondent, stating that though both schools are in same campus, they were functioning separately and that the land has been acquired on outright sale basis by G.O.Ms.No.2058, Revenue, dated 24.9.1990. The matriculation school has been functioning for last two decades and recognition has also been granted continuously and that the request of the management can be considered as per rules. If this is not considered as no objection, one is lost to note as to how there could be any other objection.

26. In fact, the District Collector by his letter, dated 1.9.2009 has also strongly recommended the case for permanent recognition to the Matriculation School. He has given glowing tribute to the manner in which the petitioner school was functioning. The letter sent by the Director of School Education is not referred to in the impugned order, dated 6.10.2009 for reasons best known. On the other hand, the letter of the Director of School Education, dated 9.2.2008 is referred to wherein the Director seems to have stated that the request for transfer cannot be permitted. In fact, reference to proviso to Section 30 (1) (2) of the

Act will clearly show that such refusal can be made only after giving an opportunity to the applicant.

27. In the present case, the letter, dated 23.5.2007 is a clear case of no objection. A perusal of the counter affidavit and various proceedings only shows that they were under misapprehension that the Government's assignment of land was conditional and therefore, there could not be any transfer. On the other hand, even if there was lease through Government order, it merely stated that the land should be used only for educational purpose. In the present case, after the lease period is over, the petitioner society had also obtained outright purchase of land, which is not denied in the impugned order. When educational agency which is the owner of school also starts more than one school, there cannot be any objection in using the property of school for very same educational purpose. In the present case, for over 20 years, the petitioner has been running its matriculation School with recognition. As stated already, there are about 1371 girl children are studying from 3rd to 10th standard in the matriculation school. From the nursery section to second standard, 835 pupils on co-education basis are studying. It cannot be closed down merely because the respondents by their whims and fancies have ordered the closure of school.

28. A perusal of the original file shows that various representations sent by the management were not considered by the second respondent. In fact, a perusal of the order in G.O.Ms.No.2058, Revenue, dated 24.9.90, shows that the Government has recognized the performance of the school and as to how it was functioning as a premier institution in Erode. After transferring the land to an extent of 3 acres and 16358 sq.ft., the Government has merely stated that because of excellent performance of school, the land was transferred on special price and not on market rate. The Director of School Education in his order, dated 9.2.2008, while rejecting the request did not even refer to the earlier letter sent by him, but by a one line order, rejected it which is also contrary to the provisions of Section 31 of the Act.

29. First of all, in the present case, the petitioner society has purchased the land. Apart from the land allotted by the State Government, it is also having total extent of 7.5 acres for running both schools. It far exceeds the condition for granting of

recognition. Secondly, the Director of School Education has virtually granted no objection even as early as 23.5.2007. The present rejection referred to in the order, has been done without notice to the petitioner and contrary to Section 31. If an Authority once grants no objection, he cannot go back on his earlier opinion and cannot rescind the same without notice to the affected parties. There is no change of purpose in utilizing the land for running the matriculation school. On the other hand, the land itself was allotted to the petitioner society only after recognizing the service rendered by the school in that locality. The second respondent has not pointed out any other defects in the refusal to grant recognition. Mr.K.Doraisamy, learned Senior Counsel appearing for the petitioner had also stated that they are willing to rectify any other defects pointed out by the respondents either now or in future and agree to abide by the same.

30. Therefore, the second respondent is directed to grant recognition to the petitioner school within four weeks from the date of receipt of copy of this order. If any other defects other than the question of land, the same may be intimated to the School for appropriate rectification. Accordingly, the impugned orders are set aside. The writ petition will stand allowed. However, there will be no order as to costs. Consequently, the connected miscellaneous petition stands closed.

31. It must be noted that the State Government is taking many efforts to improve the education of girl children in this State. Only a permanent recognition to the petitioner school will guarantee the future education of more than 2000 girls studying that too in a mofusil town. सत्यमेव जयते

4. The respondent State preferred Writ Appeal No.23 of 2010 as against the said issue and the Honorable First Division Bench of this Court dismissed the appeal and ordered that Government should proceed to consider the request of the petitioner for allotment of a separate parcel of land from the total extent of land belonging to the agency, in the name of the Matriculation School and also for grant of permanent recognition to the Matriculation School, so as to enable the students of that school to take matriculation examinations. The operative portion of the judgment dated 18.01.2010 passed by the Hon`ble Division Bench of this Court reads as follows:

11. It is very interesting to note that the very Director of School Education who rejected the request of the respondent educational agency to allot this land to the Matriculation School on 09.2.2008 had later written to the Director of Matriculation Education on 05.1.2009 that this School has been running for twenty years and its request for grant of permanent recognition can be examined. The District Collector has examined that and has given his recommendation in this regard on 03.9.2009. But strangely enough, the Government proceeded to reject the recommendation of the District Collector by its order dated 26.8.2009 and the Director of Matriculation Schools issued the order dated 06.10.2009, relying upon the Government's rejection. Both these orders which were impugned before the learned single judge have rightly been interfered with by the learned single judge.

12. We do not see any reason to interfere with the order passed by the learned Judge. The writ appeal stands accordingly dismissed. Consequently, the Government should proceed to consider the request of the respondent - educational agency for allotment of a separate parcel of land from the total extent of land belonging to the agency, in the name of the Matriculation School and also for grant of permanent recognition to the Matriculation School, so as to enable the students of that school to take matriculation examinations.

5. Challenging the same, the respondent State filed appeal before the Hon'ble Supreme Court in Special Leave Appeal (Civil) No.11497 of 2010 and the Hon'ble Supreme Court by order dated 01.7.2013 directed the case to be listed for final hearing within one year and the same is now pending. Though there is no interim order granted by the Hon'ble Supreme Court, the respondents have not passed any orders extending the recognition atleast for temporary period pending disposal of the matter before the Hon'ble Supreme Court. As a result of which, the Private Schools Fee Determination Committee has stated that unless and until the petitioner School provides a valid recognition order, the consideration of fee fixation cannot be taken up. Therefore, the petitioner has submitted a representation to the first respondent on 29.12.2014 and since no order has been passed, the present writ petition has been filed.

6. In view of the above facts and more particularly, the fact that the appeal filed by the respondents is pending before the Hon'ble Supreme Court, the question of refusing the permanent recognition to the petitioner does not arise. Furthermore, the

Hon`ble Supreme Court has not granted stay of the judgment of the Hon`ble Division Bench of this Court in W.A.No.23 of 2010. However, this Court is not inclined to issue a direction to the respondents to implement the order passed by the Hon`ble Division Bench at this juncture, since the Special Leave Appeal is pending before the Hon`ble Supreme Court. However, in the interregnum, the petitioner Institution should not be put to any prejudice. The Hon`ble judge, while disposing of the Writ petition, held that the petitioner Institution holds more than the required extent of land and, therefore, there would not be any difficulty in accepting the factual position. That apart, there are no other defects have been pointed by this Court except the question of land, which has already been ended in favour of the petitioner pursuant to the decision of this Court of course, subject to the decision of the Hon`ble Supreme Court in Special Leave Appeal (Civil) No.11497 of 2010.

7. In the light of the above, there will be a direction to the first respondent to consider the petitioners' representation dated 29.12.2014 and grant conditional recognition to enable the petitioner to run the Institution and also to approach the Private Schools Fee Determination Committee. The above direction shall be complied with by the respondents within a period of four weeks from the date of receipt of a copy of this order.

8.The writ petition is disposed of with the above direction. No costs.

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-s/d-

Assistant Registrar (CS-II)

Dt:9/3/2015

True Copy

Sub-Assistant Registrar

To

1. The Director of Matriculation Schools
College Road, Chennai -600 006

2. The Inspector of Matriculation Schools
Erode 638 002

+ 1 cc to M/s.Muthumani Doraisamy, Advocate SR 12439

+ 1 cc to the Government Pleader, High Court, Madas SR 12601

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